Canada

# Registered Charities Newsletter

## Autumn 1996 - Special Release

## Charitable Donations and the Canada-United States Income Tax Convention

**The Canada-United States Income Tax Convention (1980), referred to here as "the Treaty," is an agreement that allows residents of the two countries to avoid double taxation on income and on capital. The Treaty also helps to prevent tax evasion in both countries.**

**In this newsletter, we focus specifically on paragraphs 5 and 6 of Article XXI of the Treaty. These paragraphs provide donors with tax relief for their gifts to recognized charities. The process for obtaining this tax relief has been simplified.**

## Canadian charities and their U.S. donors

**Under paragraph 5 of the Treaty, a U.S. donor can make a tax-deductible donation from Canadian-source income to a Canadian registered charity. Since the Internal Revenue Service (IRS) will recognize a Canadian "registered charity," there is no need to apply in the U.S. The IRS will assume the charity is a private foundation under U.S. law and U.S. donors will be subject to a 30% deduction limit for their gifts. The Canadian charity may want its U.S. donors to be eligible for the higher deduction limit of 50%, and/or want to be listed in IRS Publication 78, *Cumulative List of Exempt Organizations*. In this case, the charity will have to show the IRS that it is a public charity under U.S. laws. It will need to provide certain details of its sources of financial support and possibly about its program availability and governing officials.**

**In addition, any charity that receives U.S.-source income (which includes donations) of US$25,000 or more in a year, and that wants recognition under paragraph 5, will be required to file a return with the IRS. The charity must complete the applicable Form 990, *Return of Organizations Exempt From Tax*, or Form 990-PF, *Return of Private Foundation*, for that year. Canadian registered charities can get more information by contacting the: Internal Revenue Service, South East Key District Office, EP/EO Division, P.O. Box 13163, Room 641, Baltimore, MD 21203. Telephone (410) 962-6058.**

**A U.S. donor's claim for deductions is limited to 30% or 50% of his or her Canadian-source income. Donors can carry forward excess contributions and deduct them in subsequent taxation years. The claim will not be restricted to Canadian-source income (although the 30% or 50% limitation will still apply) if the recipient charity is a Canadian college or university at which the donor, or a member of the donor's family, is or was enrolled.**

**A U.S. donor can verify "registered" status by contacting Revenue Canada's Charities Division and providing the registered name and registration number of the charity. This information is available in the "Notification of Registration" letter which Revenue Canada issues. Canadian charities are listed in IRS Publication 78 only if they submitted additional information to the IRS which is required to qualify for the higher deduction limit. As a result, a charity can still be a qualified recipient even if it is not listed.**

The donor should get an official donation receipt from the charity. The *Income Tax Regulations* list the information an official receipt must contain. The receipt must state that it is an official one for income tax purposes, and must clearly identify the charity including its registration number, and provide details about the donation.

## U.S. charities and their Canadian donors

Under paragraph 6 of the Treaty, Canadian donors can get tax relief for donations they make from U.S.-source income to U.S. charities. Claims for tax relief are limited to 20% of that net income. The claim will not be restricted to U.S.-source income (although the 20% limitation will still apply) if the recipient charity is a U.S. college or university at which the donor, or a member of the donor's family, is or was enrolled. Donors can claim donations in the year they donated them, or in any of the five years immediately following. They can carry forward any excess contributions they make for up to five years from the year of the donation. The most recent Canadian federal budget proposed raising the limit to 50% and, where appropriate, 50% of taxable capital gains. It also proposed raising the limit to 100% in the year of a donor's death with a one-year carry back provision. This will be applicable to 1996 and subsequent taxation years.

Revenue Canada will recognize U.S. charities that qualify under section 501(c)(3) of the *U.S. Internal Revenue Code*, referred to as "the Code." The U.S. charity does not need to apply in Canada, but it may have to show proof that it qualifies under the Code. This recognition does not mean that U.S. charities are "qualified donees" for the purposes of the *Income Tax Act*.

If the recipient U.S. charity is not listed in IRS Publication 78, the donor should verify if the organization qualifies under section 501(c)(3) of the Code by asking for a copy of the organization's IRS determination letter. Donors may also contact the IRS to verify a U.S. charity's status. For tax purposes, a Canadian donor must get a receipt from the qualified U.S. charity. Depending on how the donor files his or her income tax return, the donor must either submit the receipt with the return or keep it for possible review at a later date.

For more information contact the: Charities Division, Revenue Canada, 400 Cumberland Street, Ottawa ON K1A 0L5. By telephone you can contact us at (613) 954-0410 for local Ottawa calls, or 1-800-267-2384 for toll-free calls within Canada.

Date Modified: 1996-09-21